RECORD, CASE No. 13,401.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 276.

THE LEHIGH VALLEY RAILROAD COMPANY,
PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF PENNSYLVANIA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA.

FILED OCTOBER 22, 1888.

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INDEX.

	Original.	Print
Writ of error to supreme court of Pennsylvania	1	1
Citation and admission of service of same	4	2
Return to writ of error	6	2
Transcript from court of common pleas	6	2
Appearance docket entries	6	2
Appeal	7	3
Account	10	5
Bond on appeal	11	6
Narr.	13	7
Copy of account	15	8
Stipulation waiving jury	16	9
Report of gross receipts	17	9
Affidavit of William C. Alderson	21	13
State treasurer's receipt	23	14
Stenographer's notes of testimony	24	15
Testimony of John A. Glenn	24	15
Findings of fact and opinion	25	16
Defendant's exceptions to decision of the court	26	17

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 2, 1891.

	Original.	Print.
Order overruling exceptions	26	17
Exceptions on the part of the Commonwealth	27	18
Order overruling exceptions	27	18
Writ of error to court of common pleas	28	18
Certificate of filing recognizance	30	19
Return to writ of error	30	19
Docket entries	31	20
Præcipe for writ of error	33	20
Affidavit for writ of error	33	20
Recognizance	34	21
Assignment of errors	35	21
Remittitur	36	22
Opinion and judgment	37	23
Order making return to writ of error	37	23
Petition for writ of error	39	23
Allowance of writ of error	42	25
Bond	43	25
Clerk's certificate	45	26
Assignment of errors	47	27

1 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the supreme court of Pennsylvania, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treatise, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission,

2 a manifest error hath happened, to the great damage of the said Lehigh Valley Railroad Company, plaintiff in error, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the 22d day of October instant, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the eighteenth day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOSEPH P. BRADLEY,
Associate Justice Sup. Ct U. S.

3 [Endorsed:] 25. Lehigh Valley Railroad Co., plaintiff in error, *vs.* Commonwealth of Pennsylvania, defendant in error. Writ of error. Filed in S. C. of Pa. Oct. 19, 1888.
1--276.

4 The United States of America to the Commonwealth of Pennsylvania, Greeting:

You are hereby cited and admonished to be and appear at a supreme court of the United States, to be holden at Washington on the 22d day of October instant, pursuant to a writ of error filed in the prothonotary's office of the supreme court of Pennsylvania for the middle district, wherein The Lehigh Valley Railroad Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, associate justice of the Supreme Court of the United States, this 18th day of October, in the year of our Lord one thousand eight hundred and eighty-eight.

JOSEPH P. BRADLEY,
Asso. Justice Sup. Ct U. S.

Due service of the above citation is admitted.

JOHN F. SANDERSON,
Deputy Attorney General of Pennsylvania.

Oct. 18, 1888.

5 [Endorsed:] Lehigh Valley Railroad Co., plaintiff in error, *vs.* Commonwealth of Pennsylvania, defendant in error. Citation and acceptance of service. Filed in S. C. of Pa. Oct 19, 1888.

6 The answer of the justices of the supreme court of the State of Pennsylvania to the writ of error from the Supreme Court of the United States hereto annexed as follows, to wit:

Among the records and proceedings enrolled in the court of common pleas in and for the county of Dauphin, in the Commonwealth of Pennsylvania, to No. 516, Jan. term, 1888, is contained the following:

Copy of Appearance Docket Entries, Jan. Term, 1888.

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } Appeal from the Settlement of the Auditor General and State Treasurer.

1887, Dec. 29. Appeal and specifications of objections to settlement of account by auditor general and State treasurer filed.
1888, Jan'y 6. Bond filed.
1888, Jan'y 11. *Narr.* and copy of account filed.
1888, Jan'y 30. Stipulation to try without jury filed.
1888, Jan'y 30. Affidavit of W. C. Alderson filed.
1888, April 9. Stenographer's notes filed.

1888, April 9. Opinion and finding of court filed, deciding that there is due Commonwealth by the defendant the sum of seventeen hundred forty-five $\frac{84}{100}$ dollars ($1,745.84); counsel notified.
1888, May 3. Commonwealth's exceptions filed.
1888, May 9. Defendant's exceptions filed and overruled.
1888, May 11. Commonwealth's exceptions filed and overruled and judgment entered in accordance with opinion filed.
1888, May 17. Defendant's writ of error from supreme court received and filed, No. 25, May term, 1888.

Certified:

[Seal of the Court of Common Pleas of Dauphin County.]

W. H. ULRICH,
Prothonotary.

7 Appeal from the settlement of an account by the State treasurer & auditor general.

In the matter of the account for tax on gross receipts, amounting to $31,415.66, settled against the Lehigh Valley Railroad Company by the auditor general of Pennsylvania October 25, 1887, and approved by the State treasurer October 27, 1887, a copy of which account is hereunto attached.

The said Lehigh Valley Railroad Company, having paid into the State treasury the sum of $10,673.27, being the tax at eight mills upon its receipts derived from transportation wholly within the State of Pennsylvania, hereby appeals from said settlement to the court of common pleas of Dauphin county, and files the following specifications of objections thereto, agreeably to the provisions of the act of assembly in such case made and provided:

1. The main line of the Lehigh Valley Railroad Company extends from Wilkes Barre, in the State of Pennsylvania, to Perth Amboy, in the State of New Jersey. The company also owns numerous branch roads, some of which are in Pennsylvania and some in New Jersey. Under agreement with other railroad companies it runs its own trains from Wilkes Barre to the city of New York, and also from Wilkes Barre to the city of Buffalo, in the State of New York, and its principal business consists of the transportation of freight and passengers to or from other States out of, into, or through the State of Pennsylvania. A large proportion of the receipts taxed in the settlement hereby appealed from was derived from freight and passengers carried by continuous transportation from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania or from points in other States to points in other States passing through the State of Pennsylvania. The taxation of freight or passengers so transported by continuous lines of transportation to or from other States out of, into, or through the State of Pennsylvania or of the receipts for such transportation to or from other States out of, into, or through the State of Pennsylvania is in violation of that clause of section 8 of article I of the Con-

stitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes; and the act of June 7, 1879, under which said tax is claimed, or any other act of assembly, if it shall be found to warrant the imposition of the said tax, is therefore unconstitutional and void.

2. The settlement of account hereby appealed from embraces tax upon $201,630.65, receipts from transportation of freight, passengers, &c., by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but passing out of the State into other
8 States and back again into Pennsylvania in course of transportation. The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

In the settlement of account hereby appealed from tax is charged upon $49,581.88, receipts from transportation of freight, passengers, &c., by continuous carriage from points in a foreign State to other points in the same State after passing through the State of Pennsylvania. The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

4. In the settlement of account hereby appealed from tax is charged upon $292,711.31, receipts from transportation of freight, passengers, &c., by continuous carriage from points in other States to points in Pennsylvania The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

5. In the account hereby appealed from tax is charged upon $2,701,017.70, receipts from transportation of freight, passengers, &c., by continuous carriage from points in Pennsylvania to points in other States. The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to
9 regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

6. In the account hereby appealed from tax is charged upon

$249,799.03, receipts from transportation by continuous carriage of freight, passengers, &c., from points in a foreign State passing through Pennsylvania and ending in a third State. The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

7. In the account hereby appealed from tax *if* charged upon $52,894.78, receipts from transportation of freight, passengers, &c., by continuous carriage from points in foreign States to other points in foreign States not touching Pennsylvania. The taxation of receipts so derived is in conflict with that clause of section 8 of article I of the Constitution of the United States which provides that "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes;" and the act of June 7, 1879, or any other act of assembly, if it shall be found to warrant the imposition of said tax, is therefore unconstitutional and void.

8. The Lehigh Valley Railroad Company having paid into the State Treasury the sum of $10,673.27, being the full tax at eight mills upon $1,334,152.34, its entire receipts from business wholly within the State of Pennsylvania, it is not indebted to the Commonwealth of Pennsylvania in any further sum, and the balance claimed in the settlement of account hereby appealed from is erroneously and illegally charged.

Harrisburg, Pa., December 2, 1887.

THE LEHIGH VALLEY
RAILROAD COMPANY,

(Signed) By its attorney, M. E. OLMSTED.

Endorsement: 816. Jan. term, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. Appeal from the settlement of an account by the auditor general & State treasurer. Filed in the auditor general's office the 20 day of Dec., 1887. Thomas McCamant, for A. W. Norris, auditor general. Filed in the prothonotary's office the 29 day of Dec., 1887. W. H. Ulrich, prothonotary.

Account.

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending June 30, 1887, as per reports herewith filed:

Gross receipts	$4,881,787 69	
Proportion taxable in Penna., $\frac{27107}{33698}$	3,926,957 65	
Tax at rate of eight-tenths of one per cent.		$31,415 66
Due Commonwealth		$31,415 66

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *October* 25, 1887.

Settled and entered.

(Signed) JOHN A. GLENN,
For A. WILSON NORRIS,
Auditor General.

TREASURY DEPARTMENT OF PA,
HARRISBURG, *October* 27, 1887.

Approved.

(Signed) H. C. GREENAWALT,
For W. LIVSEY,
State Treasurer.

Bond on Appeal.

11 Know all men by these presents that we, The Lehigh Valley Railroad Company and Charles Hartshorne & J. R. Fell, of the city of Philadelphia and State of Pennsylvania, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of forty-one thousand four hundred eighty-four $\frac{78}{100}$ dollars ($41,484.78), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and the corporate seal of said company and dated the tenth day of Jan., A. D. 1888.

Whereas the above-bounden Lehigh Valley Railroad Company has entered in the office of the auditor general of Pennsylvania an appeal to the court of common pleas of Dauphin county from the settlement of an account for tax on gross receipts, amounting to thirty-one thousand four hundred fifteen $\frac{66}{100}$, upon which there has been paid into the State treasury ten thousand six hundred forty-two $\frac{32}{100}$ dollars, leaving a balance of twenty thousand seven hundred forty-two & $\frac{39}{100}$ dollars ($20,742.39), made by the auditor general on the 25 of Oct., 1887, and approved by the State treasurer on the 27 of Oct., 1887:

Now, the condition of this obligation is such that if the said Lehigh Valley Railroad Company shall prosecute its said appeal with effect and pay all costs or charges which the court or arbitrators having jurisdiction to hear and determine said appeal shall award, and also pay any sum of money which shall appear by the judgment of the court or award of arbitrators to be due upon said account to the Commonwealth of Pennsylvania, then this obligation

to be void and of none effect, or otherwise to be and remain in full force and virtue.

LEHIGH VALLEY R. R COMPANY,
By CHARLES HARTSHORNE, *President.*

[Seal of the L. V. R. R. Co.]

Attest: JOHN R. FABERSHAWE, *Secretary.*
CHARLES HARTSHORNE. [SEAL.]
J. R. FELL. [SEAL.]

Signed, sealed, and delivered in presence of—
J. R. FABERSHAWE.
JOHN J. KIRK.

The security of the above bond is approved.

ROBERT V. WILSON,
Judge C. P., City & County of Philadelphia.

12 Endorsement: No. 516. Jan. 2, 1888. Commonwealth *v.* Lehigh Valley R. R. Bond on appeal from the settlement of an account by the auditor general & State treasurer.

Approval of Bond.

And now, to wit, Jan. 6, 1888, the security of the within bond is approved.

J. W. SIMONTON, *P. J.*

Filed Jan. 6, 1888.

M. E. OLMSTED,
Attorney for Defendant.

Narr. & Copy of Account.

13 In Dauphin Common Pleas, No. 516, Jan. Term, 1888.

DAUPHIN COUNTY, *ss:*

The Commonwealth of Pennsylvania, by her attorney general, complains of The Lehigh Valley Railroad Company of a plea that they render unto the said Commonwealth the sum of one hundred thousand dollars, lawful money of the United States, which they owe to and unjustly detain from her; for that whereas the said defendants, on the 27 day of Oct., A. D. 1888, at the county of Dauphin aforesaid, were indebted to the said plaintiff in the sum of thirty-one thousand four hundred & fifteen $\frac{66}{100}$ dollars, lawful money of the United States, on an account examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, and duly entered in the books of his office, as authorized and required by law, on the day and year last aforesaid, in which a certain sum of money, to wit, the sum last aforesaid, is due and owing the said plaintiff from the said defendants, with interest thereon, at the rate of twelve per centum per annum, from and after the ex-

piration of sixty days from the day upon which the said account was so as aforesaid examined, adjusted, settled, and signed by the auditor general of this Commonwealth, for tax on gross receipts, per act of June 7, 1879, for six months ending June 30, 1887, which said account was, on the 27 day of Oct., A. D. 1887, submitted to, revised, and approved by the State treasurer and a copy thereof thereafter sent by the said auditor general, under his hand and seal of office, to the said defendants, and which yet remains in full force against the said defendants and appealed from, whereby, and by force of the statute in such case made and provided, an action hath accrued to the said plaintiff to demand and have of and from the said defendants a certain sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account so as aforesaid examined, adjusted, settled, and signed by the auditor general and State treasurer of this Commonwealth, parcel of the said sum above demanded, with interest and other legal charges; and, being so indebted, the said defendants afterwards, to wit, on the day and year aforesaid, at the county aforesaid, promised to pay to the said plaintiff, on request, the said last-mentioned sum of money;

And whereas, also, the said defendants, on the day and year in the first count first mentioned, at the county aforesaid, were indebted to the said plaintiff in a certain further sum of money, to wit, the sum mentioned and ascertained to be due to this Commonwealth in the said account in the first count mentioned, for money then and there had and received by the said defendants to and for the
14 use of the said plaintiff; and also a certain further sum of money, to wit, the sum last aforesaid, on an account settled and entered by the auditor general of this Commonwealth against the said defendants on the day and year in the first count mentioned, for tax on ——, and approved by the State treasurer on the day and year in the first count mentioned;

And whereas afterwards, to wit, on the day and year last aforesaid, at the county aforesaid, the said defendants, in consideration of the premises, promised to pay the two last-mentioned several sums of money respectively to the said plaintiff on request; yet the said defendants have disregarded their said promises, and, although often requested so to do, have not as yet paid any of the said several sums of money or any part thereof, to the damage of the said plaintiff of one hundred thousand dollars, and therefore she brings suit, &c.

JOHN R. SANDERSON,
Deputy Attorney General.

15 *Copy of Account.*

Lehigh Valley Railroad Company in account with the Commonwealth of Pennsylvania, Dr.

For tax on gross receipts, per act of June 7th, 1879, for six months ending June 30, 1887, as per reports herewith filed:

Gross receipts		$4,881,787 69
Proportion taxable in Penna., $\frac{27107}{33695}$		3,926,957 65
Tax at rate of eight-tenths of one per cent.		$31,415 66
Due Commonwealth		$31,415 66

AUDITOR GENERAL'S DEPARTMENT,
HARRISBURG, *October* 25, 1887.

Settled and entered.
(Signed) JOHN A. GLENN,
For A. WILSON NORRIS,
Auditor General.

TREASURY DEPARTMENT OF PA.,
HARRISBURG, *October* 27, 1887.

Approved:
(Signed) H. C. GREENAWALT,
For W. LIVSEY,
State Treasurer.

Endorsement: 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. *Narr.* & copy of account. Filed Jan. 11, 1888. W. S. Kirkpatrick, attorney general.

16 In the Court of Common Pleas of Dauphin County, No. 516, Jan. Term, 1888.

COMMONWEALTH OF PENNSYLVANIA
vs.
LEHIGH VALLEY RAILROAD CO.

It is hereby agreed that a trial by jury be dispensed with in the above-stated case, and that the same be submitted to the decision of the court, to be heard and determined under the provisions of an act entitled "An act to provide for the submission of civil cases to the decision of the court and to dispense with trial by jury," approved the 22d day of April, 1874, subject, however, to a writ of error, as in other cases, at the option of either party.

Jan. 30th, 1888.

W. S. KIRKPATRICK,
Att'y Gen'l.
M. E. OLMSTED,
Atty for Deft'd't.

Endorsement: No. 516. Jan. term, 1888. Commonwealth *vs.* Lehigh Valley Railroad Co. Stipulation to try without jury. Filed Jan. 30, 1888.

17 *Report of Gross Receipts.*

To the auditor general of Pennsylvania:

In accordance with the requirements of the seventh section of an act entitled "An act to provide revenue by taxation," approved June 7, 1879, as treasurer of the Lehigh Valley Railroad Company I make the following report of the gross receipts of said company for the six months ending June 30, 1887.

(Signed) WILLIAM C. ALDERSON, *Treasurer.*

OFFICE OF THE LEHIGH VALLEY RAILROAD COMPANY,
228 SOUTH THIRD STREET,
PHILADELPHIA, PA., *October 19th*, 1887.

Gross receipts derived from all sources during the above period as follows:

For transportation of coal	$3,200,578 48
For transportation of freight	1,196,126 86
For transportation of passengers, express matter, and U. S. mail	485,082 35
Total gross receipts	$4,881,787 69

Total miles of railroad from the operation of which said receipts were derived	336.98
Total miles of said railroad in Pennsylvania	271.07

The main line of railroad operated by the Lehigh Valley Railroad Company extends from Perth Amboy, New Jersey, to Wilkes Barre, Pennsylvania, with numerous branches in Pennsylvania and New Jersey. The company has also running arrangements with other companies whereby it runs its own trains in a through line from Jersey City, New Jersey, to Buffalo, New York.

18 A very large portion of its business consists of the transportation of freight, passengers, &c., either from points in Pennsylvania to points in other States or from points in other States to points in Pennsylvania, or from points in other States to points in other States, passing through the State of Pennsylvania, about one-half of its entire receipts being derived from the transportation of anthracite coal from Pennsylvania into other States.

The following detailed statement shows the several classes of transportation from which the receipts returned were derived:

Coal.

Receipts from transportation of coal from points in Pennsylvania to points in Pennsylvania without passing out of the State	$587,095 88
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but carried out of the State into other States and back again into Pennsylvania in course of transportation	190,676 64
Receipts from transportation of coal by continuous carriage from points in Pennsylvania to points in other States	2,422,805 96
Total receipts from transportation of coal	$3,200,578 48

Freight Other Than Coal.

Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$427,405 52
Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	10,476 34
Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State, passing through the State of Pennsylvania	38,597 11
Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	230,900 42
Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	214,928 79
Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	248,045 01
Receipts from transportation from points in foreign States to other points in foreign States, not touching the State of Pennsylvania	25,773 67
Total	$1,196,126 86

Passengers, Express, and Mail.

Receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$319,650 74
Receipts from continuous transportation from points in Pennsylvania to other points in Pennsylvania, but passing out of Pennsylvania into other States and back again into Pennsylvania in course of transportation	477 67
Receipts from transportation by continuous carriage from points in a foreign State to other points in the same State passing through the State of Pennsylvania	10,984 77
Receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	61,810 89
Receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	63,282 95

Receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, to points in a third State	1,754 02
Receipts from transportation from points in a foreign State to other points in foreign States not touching the State of Pennsylvania	27,121 11
Total	$485,082 35

20 *Summary.*

1. Total receipts from transportation from points in Pennsylvania to other points in Pennsylvania without passing out of the State	$1,334,152 34
2. Total receipts from transportation by continuous carriage from points in Pennsylvania to other points in Pennsylvania, but passing out of the States into other States and back again into Pennsylvania in course of transportation	201,630 65
3. Total receipts from transportation by continuous carriage from points in a foreign State to other points in the same State after passing through the State of Pennsylvania	49,581 88
4. Total receipts from transportation by continuous carriage from points in other States to points in Pennsylvania	292,711 31
5. Total receipts from transportation by continuous carriage from points in Pennsylvania to points in other States	2,701,017 70
6. Total receipts from transportation by continuous carriage from points in a foreign State, passing through Pennsylvania, and ending in a third State	249,799 03
7. Total receipts from transportation from points in foreign States to other points in foreign States not touching Pennsylvania	52,894 78
Total receipts	$4,881,787 69

This report is made agreeably to the provisions of the act of assembly above referred to and in deference to the request of the auditor general, not, however, in admission of any liability on the part of the company to the Commonwealth of Pennsylvania for taxation upon or in request of any of the receipts herein returned; but, on the contrary, denying and protesting against such liability and reserving to the company all legal rights in the premises.

(Signed) WM. C. ALDERSON, *Treasurer.*

STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

On this 19th day of October, 1887, before me, the subscriber, a notary public in and for said State, residing in said city, personally appeared Wm. C. Alderson, who, being by me duly affirmed according to law, did depose and say that he is the treasurer of the Lehigh Valley Railroad Company, and that the foregoing report is correct and true according to the best of his knowledge, information, and belief.

(Signed) WM. C. ALDERSON.

Affirmed and subscribed before me the day and year aforesaid.

[SEAL.] J. HENRY WILLIAMS,
Notary Public.

21 *Affidavit of Wm. C. Alderson.*

COMMONWEALTH OF PENNSYLVANIA *vs.* LEHIGH VALLEY RAILROAD COMPANY. } No. 516. January Term, 1888, in the Court of Common Pleas of Dauphin County.

STATE OF PENNSYLVANIA, } ss:
City of Philadelphia, }

On the 26th day of January, A. D. 1888, before me, a notary public in and for said State, residing in said city, personally appeared William C. Anderson, who, being by me duly sworn according to law, did depose and say as follows:

I am the treasurer of the Lehigh Valley Railroad Company, and as such treasurer, on the nineteenth day of October, 1887, made to the auditor general of Pennsylvania a report of gross receipts for the six months ending June 30th, 1887. Wherever in the said report I used the term "continuous carriage" or "continuous transportation" the freight or passengers from the transportation of which the receipts were derived were carried between the points mentioned for a single sum or charge and upon a single way-bill or ticket, and were, when taken upon the care of this company, destined to be carried and were carried from point to point, as in said statement set forth.

The Lehigh Valley Railroad Company has no railroad of its own reaching the city of Philadelphia, but transports coal and other merchandise and sometimes passengers from Mauch Chunk and other points in Pennsylvania over its own line to Phillipsburg, in the State of New Jersey, from which point it is carried upon the Belvedere and Delaware railroad to Trenton, and thence, by the Pennsylvania railroad lines, to the city of Philadelphia. So far as the Lehigh Valley railroad line is concerned, the transportation is from Mauch Chunk or the other points in Pennsylvania to Phillipsburg,

in New Jersey; but, by arrangements between this company
22 and the corporations owning the other roads, the transportation is continuous from Mauch Chunk and the other points in Pennsylvania to Philadelphia.

Some of the trains, and in many instances the same cars, which carried the freight and passengers indicated between points in Pennsylvania and the city of Philadelphia carried also freight and passengers destined and carried from points in Pennsylvania to points in New Jersey and New York, and *vice versa*.

The various items of receipts shown in my said report and classified in the third paragraph of the summary as total "receipts from transportation by continuous carriage from points in a foreign State to other points in the same State after passing through the State of Pennsylvania" were derived from transportation of freight and passengers billed or ticketed from the city of New York to other points in the State of New York, and *vice versa*.

The same trains and the same cars which carried the said freight and passengers carried also freight and passengers destined and carried from points in Pennsylvania to points in other States and from points in other States to points in Pennsylvania.

(Signed) WM. C. ALDERSON, *Treasurer.*

Sworn and subscribed before me the day and year aforesaid.

[SEAL.] J. HENRY WILLIAMS,
Notary Public.

Endorsement: No. 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. Affidavit of W. C. Alderson. Filed Jan. 30, 1888.

23 (Duplicate.)

State Treasurer's Receipt.

TREASURY DEPARTMENT OF PENNSYLVANIA,
HARRISBURG, *Nov.* 2, 1887.

Received from Lehigh Valley Railroad Company ten thousand six hundred and seventy-three dollars and twenty-seven cents on account, to wit: Tax on gross receipts from transportation wholly within the State of Pennsylvania for the six months ending June 30, 1887, $10,673.27. Paid under protest.

(Signed) H. C. GREENAWALT,
For W. LIVSEY,
State Treasurer.

Registered and countersigned.

(Signed) C. W. MYERS,
For A. WILSON NORRIS,
Auditor General.

Endorsement: 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. Receipt for $10,673.27, paid into the State treasury.

24 *Stenographer's Notes of Testimony.*

HARRISBURG, PA., MONDAY, *January* 30, 1888.

Deputy Attorney General Sanderson having stated the case for the Commonwealth—

JOHN A. GLENN, called by Commonwealth, sworn with uplifted hand.

Direct examination by Mr. SANDERSON:

Q. You are corporation clerk in the office of the auditor general of Pennsylvania?

A. Yes, sir.

Q. And have been such how long?

A. Since the third day of May, 1887.

Q. As corporation clerk did you make a settlement in the case of the Lehigh Valley Railroad Company?

A. Yes, sir.

Q. Are these the report, account, and settlement in that case (handing papers to witness)?

A. Yes, sir; this is a settlement for tax upon gross receipts for the six months ended June 30, 1887, showing a balance due the Commonwealth of $31,415.66. It was settled and entered in the auditor general's department October 25, 1887, and approved by the State treasurer October 27, 1887. It was based upon a report of gross receipts filed by the Lehigh Valley Railroad Company in the auditor general's department on October 21, 1887.

Commonwealth's counsel offer in evidence the report, account, and settlement, marked "Exhibit IV, H. C. D."

Commonwealth rests.

Defendant's counsel offers in evidence the appeal and specifications of objections of The Lehigh Valley Railroad Company, defendant.

Also the deposition of William C. Alderson, treasurer of the corporation defendant, dated January 26, 1888.

Also the receipt of the State treasurer, as follows: (See paper filed.)

Attorney General KIRKPATRICK: The affidavit is admitted with like effect as if the matters therein contained were testified to upon the witness stand by the party making it. The Commonwealth objects, however, to its reception upon the ground of incompetency and irrelevancy of the matters testified to.

Defendant rests.

(Argument.)

Endorsement: 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Stenographer's notes of testimony. Filed Apr. 7, 1888.

25 *Opinion of Court of Common Pleas and Findings of Fact.*

COMMONWEALTH vs. LEHIGH VALLEY R. R. Co. } Dauphin C. P., No. 516, Jan. T., 1888. Appeal from Accounting Officers.

By the COURT:

This case was tried without a jury under the act of 1874. We find the facts to be as follows:

1. The defendant is a railroad company incorporated by this Commonwealth and engaged in the business of transporting freight and passengers. Its railway connects with other lines in other States.

2. For the six months ending June 30, 1887, its gross receipts for transportation were $4,881,787.69. Of this amount $1,334,152.34 was received for transportation beginning and ending in Penna. without passing out of the State in the course of transit; $201,630.65 was received for transporting by continuous carriage freight and passengers from one point in Penna. to another point in Penna., which freight and passengers were carried out of the State and in again in course of transit, and $3,346,004.20 was received for transportation beginning in Penna. and ending in other States, or beginning in other States and ending in Penna., or beginning in other States, passing through Penna., and ending in other States, or beginning and ending in other States without touching Penna. In the last five classes the transportation was continuous from the point of beginning to the point of ending, and the freight and passengers were carried for a single sum or charge and upon a single way-bill or ticket.

3. This settlement taxes $\frac{27}{33}\frac{107}{695}$ of the entire sum of $4,881,787.69 (that fraction representing the defendant's mileage within the State) for the six months ending June 30, 1887, and is made under section 7 of the act of 1879. (P. L., 116.)

4. The defendant has paid to the Commonwealth the sum of $10,673.27, being a tax of eight-tenths of one per cent. upon the above-stated item of $1,334,152.34.

Conclusions of Law.

The questions raised by this appeal have been discussed in Com. *v.* Del. & H. Can. Co., No. 534, June T., 1887, and Com. *v.* N. Y., L. E. & W. R. R. Co., No. 523, June T., 1887, Dauphin C. P. For reasons there given we hold that the Commonwealth can only tax the two items of $1,334,152.34 and $201,630.65, being the amount received for transportation between points both of which are within this State. As tax has been already paid upon the larger sum, the amount now due is tax upon $201,630.65.

The amount due the Commonwealth is as follows:

$\frac{8}{10}$ of 1 per cent. upon $201,630.65	$1,613 04
Int. from Dec. 26, '87, to April 2, '88	52 15
Att'y gen'l's com'n	80 65
Total	$1,745 84

For which sum we direct judgment to be entered if exceptions are not filed according to law.

(Signed) JOHN B. McPHERSON, *A. L. J.*

Endorsement: No. 516. Jan. term, 1888. Com. *vs.* Lehigh Valley R. R. Co. Finding of facts & opinion. Filed April 9, 1888.

26 *Defendant's Exceptions to Decision of the Court.*

This case having been tried without a jury under the act of 1874, defendant files the following exceptions to the decision of the court:

1. The court erred in including in the judgment in favor of the Commonwealth a tax upon $201,630.65, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit.

2. The court erred in deciding that "in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be."

3. The court erred in not deciding that the transportation by continuous carriage of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

4. The court erred in directing judgment to be entered in favor of the Commonwealth for $1,745.84.

5. The court erred in not directing judgment to be entered in favor of defendant.

(Signed) M. E. OLMSTED,
Attorney for Defendant.

Order of Court Overruling Defendant's Exceptions.

May 4, '88.—Exceptions overruled and judgment directed to be entered in accordance with opinion previously filed.

(Signed) JOHN P. McPHERSON, *A. L. J.* [SEAL.]

Endorsement: 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. Defendants' exceptions to the decision of the court and order of court overruling the same. Filed March 9, 1888. Olmsted.

27 *Exceptions on the Part of the Commonwealth.*

1. The learned court erred in its conclusion of law as follows:

"The questions raised by this appeal have been discussed in Com. *v.* Del. & H. Can. Co., No. 523, June T., 1887, Daup. C. P. For reasons there given we hold that the Commonwealth can only tax the two items of $1,334,152 34 and $201,630.65, being the amount received for transportation between points both of which are within this State."

2. The learned court erred in not entering judgment in favor of the Commonwealth for the full amount of her claim.

(Signed) JNO. F. SANDERSON.
Deputy Attorney General.

Order of Court Overruling Commonwealth's Exceptions.

May 11, '88.—Exceptions overruled and judgment directed in accordance with opinion previously filed.

(Signed) JOHN B. McPHERSON, *A. L. J.*

Endorsement: No. 516. Jan. 7, 1888. Commonwealth *vs.* Lehigh Valley R. R. Co. Filed May 3, 1888.

28 *Writ of Error from the Supreme Court of Pennsylvania.*

MIDDLE DISTRICT OF PENNSYLVANIA, *set:*

[Seal of the Supreme Court of Pa., Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Because in the record and process and in rendering the judgment in a certain plaint which was in our said court, before the judges of the same court, by our writ, between The Lehigh Valley Railroad Company, plaintiff in error, and The Commonwealth of Pennsylvania, defendant in error, as it is said, manifest error hath intervened, to the great damage of the said plaintiff in error, as by complaint of the same plaintiff in error we have received information, we, willing that if any error be therein it should be corrected and that speedy justice be done to the parties in this part, do command you that if judgment, as it is said, be rendered in the said plea, then the record and process and all things touching the same, under your seals, distinctly and openly, you have before the justices of our supreme court of Pennsylvania, at a supreme court to be held at Harrisburg in and for the middle district of said Commonwealth, on the 21 Monday foll. 1 Mon. of Jan., 1888, being the 1st Monday of the term, and this writ, that, the record and process aforesaid being

inspected, we may further cause to be done what of right and according to our laws and customs ought.

Witness the Honorable Isaac G. Gordon, doctor of laws, chief justice of our supreme court, at Harrisburg, the 17 day of May, in the year of our Lord one thousand eight hundred and eighty-eight and of the Commonwealth the one hundred and twelfth.

WILLIAM PEARSON,
Prothonotary.

29 Endorsement: No. 25. May term, 1888. Supreme court, middle district. Lehigh Valley Railroad Co., plaintiff in error, *vs.* Com. of P., defendant in error. Writ of error to the court of C. P. for the county of Dauphin. No. 516. Jan. term, 1888. Returnable the 21 Mon. foll. 1 Monday of Jan., 1888. Rule on the defendant in error to appear and plead on the return day of the the writ. N. B.: 10 days' notice to the parties or counsel below is necessary to compel an appearance. Filed in supreme court May 17, 1888.

30 *Certificate of Filing of Recognizance.*

I certify that recognizance for costs in $100, with A. C. Stamm as bail, has been filed in the supreme court.

WILLIAM PEARSON,
Prothonotary.

Return to Writ of Error.

The record and process and all things touching the same, so full and entire as before us they remain, to the honorable the judges of the supreme court of the Commonwealth of Pennsylvania, sitting in and for the middle district, we certify and send as within we are commanded.

J. W. SIMONTON, *P. J.* [L. S.]

31 In the Supreme Court of Pennsylvania in and for the Middle District of said Court, May Term, 1888.

At a supreme court of the State of Pennsylvania sitting in and for the middle district of said court, as at the city of Harrisburg, Pennsylvania, on the 21st Monday following the 1st Monday of January, A. D. 1888—present, the Honorable Isaac G. Gordon, chief justice, and Edward M. Paxson, James P. Sterrett, Henry Green, Silas M. B. Clark, and Henry W. Williams, justices, and William Pearson, prothonotary, of the said supreme court in and for said middle district, to May term, 1888, No. 25—it is contained as follows, to wit:

Writ of error to the court of common pleas of Dauphin county.

LEHIGH VALLEY RAILROAD COMPANY,
Defendant Below,
vs.
COMMONWEALTH OF PENNSYLVANIA,
Plaintiff Below.
No. 516. Jan. Term, 1888.

Docket Entry.

May 17th, 1888.—Præc., aff., and recog. filed; *eo die*, exit writ of error, returnable *sec. reg.*

May 24th, 1888.—Assignments of error returned and filed.

May 26th, 1888.—Record returned and filed.

May 31st, 1888.—Argued.

Oct. 1st, 1888.—Judgment affirmed *per curiam.*

Oct. 19th, 1888.—Writ of error from the Supreme Court of the United States received and filed.

32 Oct. 19th, 1888.—Petition for allocatur of writ from the Supreme Court of the United States; allocatur of said writ by Hon. Joseph P. Bradley, justice of said court, and writ of error bond in the sum of $3,000 received and filed.

Oct. 19th, 1888.—Citation from said Joseph P. Bradley and acceptance of service thereof by the deputy attorney general of the State of Pennsylvania received and filed.

Certified from the record.

[Seal of the Supreme Court of Pennsylvania, Middle District, 1776.]

WILLIAM PEARSON,
Prothonotary.

Præcipe for Writ of Error.

33 In the Supreme Court of Pennsylvania for the Middle District.

LEHIGH VALLEY R. R. Co., Defendant Below, Plaintiff in Error,
vs.
COMMONWEALTH OF PENNSYLVANIA, Plaintiff Below, Defendant in Error.

Issue writ of error to the court of common pleas of Dauphin county to remove the record and proceedings in a certain action of debt depending therein to No. 516 of Jan. term, 1888, returnable to May term, 1888.

M. E. OLMSTED,
Attorney for Plaintiff in Error.

To William Pearson, prothonotary supreme court of Pa., middle district.

Affidavit.

DAUPHIN COUNTY, *ss:*

M. E. Olmsted, attorney for the above-named plaintiff in error,

being duly sworn according to law, deposes and says that the writ of error in this case is not intended for delay.

M. E. OLMSTED,
Attorney for L. V. R. R.

Sworn & subscribed before me this 17 day of May, 1888.
WILLIAM PEARSON,
Prothonotary.

34 *Recognizance.*

In the Supreme Court of Pennsylvania for the Middle District.

LEHIGH VALLEY RAILROAD CO., Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.	Surwrit of Error to the Court of Common Pleas for the County of Dauphin, of Jan. Term, 1888. No. 516.

DAUPHIN COUNTY, *ss:*

We, The Lehigh Valley Railroad Company and A. C. Stamm, severally acknowledge to owe the above-named defendant in error the sum of one hundred dollars, upon condition that the above-named plaintiff in error prosecute writ of error with effect, and if judgment be affirmed or the writ of error be discontinued or non-prossed, to pay the cost adjudged accruing upon such judgment and all other costs that may be awarded upon such writ of error.

LEHIGH VALLEY RAILROAD CO.,
Per M. E. OLMSTED.
A. C. STAMM.

Taken and acknowledged this 17th day of May, A. D. 1888.
WILLIAM PEARSON,
Prothonotary.

35 Endorsement: No. 24. May term, 1888. Supreme court of Pennsylvania, middle district. Lehigh Valley Railroad Co. *vs.* Commonwealth of Pennsylvania. Precipe, affidavit, and recognizance for writ of error. Dauphin county. Filed May 17, 1888. M. E. Olmsted, attorney for plaintiff in error.

Assignments of Error.

1. The court erred in overruling the first exception filed by defendant, which was as follows:

"The court erred in including in the judgment in favor of the Commonwealth a tax upon $201,630.65, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit."

2. The court erred in overruling the second exception filed by defendant, which was as follows:

"The court erred in deciding that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be.'"

3. The court erred in overruling the third exception filed by defendant, which was as follows:

"The court erred in not deciding that the transportation, by continuous carriage, of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power 'to regulate commerce with foreign nations and among the several States and with the Indian tribes.'"

4. The court erred in overruling the fourth exception filed by the defendant, which was as follows:

"The court erred in directing judgment to be entered in favor of the Commonwealth for $1,745.84."

M. E. OLMSTED,
Attorney for Plaintiff in Error.

36 *Remittitur to Court of Common Pleas.*

MIDDLE DISTRICT OF PENNSYLVANIA, *sct:*

[Seal of the Supreme Court of Pa., Middle District.]

The Commonwealth of Pennsylvania to the justices of the court of common pleas for the county of Dauphin, Greeting:

Whereas, by virtue of our writ of error from our supreme court of Pennsylvania in and for the middle district, returnable in the said court on the 21 Monday foll. 1 Mon. of Jan., in the year of our Lord one thousand eight hundred and eighty-eight, a record was brought into the same court of a judgment rendered against The Lehigh Valley Railroad Company, plaintiff in error, at the suit of The Commonwealth of Pennsylvania, defendant in error, and it was so proceeded in our supreme court that the said judgment was affirmed and the record and proceedings thereupon and all things concerning the same were (agreeably to the directions of the act of assembly in such cases made and provided) ordered by the said supreme court to be remitted to the court of com. pleas for the county of Dauphin aforesaid as well for execution or otherwise as to justice shall appertain. Wherefore we remit you the record of the judgment aforesaid and the proceedings thereupon in order for execution or otherwise as aforesaid.

Witness the Hon. Isaac G. Gordon, chief justice of our supreme court, at Harrisburg, the 2nd day of Oct., in the year of our Lord one thousand eight hundred and eighty-eight.

WILLIAM PEARSON,
Prothonotary.

37 *Opinion of the Supreme Court of Pennsylvania.*

LEHIGH VALLEY RAILROAD
vs.
COMMONWEALTH. } No. 25. May Term, 1888.

Error to the court of common pleas of the county of Dauphin. Argued May 31, 1888.

Per Curiam:

We have examined with care the opinion of the learned judge who decided the above-stated case in the court below, and we are satisfied that the conclusions re-ched by him are correct; nor do we deem it advisable to add anythink to what he has so well said.

The judgment is affirmed.

Endorsement: No. 25. May term, 1888. Lehigh Valley Railroad Co. *vs.* Commonwealth. *Per curiam.* Filed Oct. 1st, 1888.

Return to Writ of Error from the Supreme Court of the United States.

An- now, here, on this day, to wit, the 20th day of October, A. D. 1888, the said The Lehigh Valley Railroad Company produced to the supreme court of Pennsylvania, here, the writ of the United States of America for the correcting of errors of and upon the
38 premises, commanding the record and proceedings aforesaid of the judgment aforesaid so as aforesaid rendered, with all things touching the same, to be transmitted to the Supreme Court of the United States to be held at the city of Washington on the 22d day of October, A. D. 1888, which writ of error is hereto attached.

In pursuance whereof, and in accordance with the form and effect of the act of Congress in such case made and provided, a transcript of the record and proceedings of the judgment aforesaid so as aforesaid rendered, with all things relating to the same, together with the said writ of error, are hereby transmitted to the said Supreme Court of the United States accordingly.

Petition for Allocatur.

39 To the honorable justice- of the Supreme Court of the United States:

The petition of the Lehigh Valley Railroad Company respectfully showeth—

That the main line of railroad operated by your petitioner extends from Wilkes Barre, in the State of Pennsylvania, to Perth Amboy, in the State of New Jersey, and that your petitioner has running arrangements with other companies owning connecting roads.

That a large portion of its business consists of the transportation of freight and passengers to or from other States out of, into, or into, through, and out of the State of Pennsylvania.

That a portion of its business consists also in the transportation of freight and passengers destined from points in Pennsylvania to other points in Pennsylvania by lines partly in Pennsylvania and partly in other States, the said freight and passengers being carried out of Pennsylvania into other States and back again into Pennsylvania in course of transit, as, for instance, anthracite coal carried upon the railroad of your petitioner from Mauch Chunk, Pennsylvania, to Phillipsburg, New Jersey, thence upon the Belvedere, Delaware, railroad to Trenton, New Jersey, and thence over the New York division of the Pennsylvania Railroad Company to Philadelphia, Pa., the receipts of your petitioner from such transportation having been $201,630.65 during the six months ending June 30, 1887.

40 That the auditor general of Pennsylvania, claiming to act under the authority of the seventh section of an act of the General Assembly of said State approved June 7, 1879, settled an account against your petitioner for tax on gross receipts for the six months ending June 30, 1887, in which account was embraced a tax of eight mills upon the item of $201,630.65, derived as aforesaid.

That your petitioner appealed from the said settlement of its account to the court of common pleas of Dauphin county, to No. 516, Jan. term, 1888, in said court, and in its appeal objected to the legality of the tax upon the ground that the act of assembly imposing it was in violation of that clause of section 8 of article I of the Constitution of the United States which provides that Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes.

That the court of common pleas of Dauphin county entered judgment in favor of the Commonwealth of Pennsylvania and against your petitioner, in which was specifically imposed a tax of eight mills upon the item of $201,630.65 of receipts before mentioned.

That to this decision of the court your petitioner filed, *inter alia*, the following exceptions:

"1. The court erred in including in the judgment in favor of the Commonwealth a tax upon $201,630.65, receipts for transporting freight and passengers from one point in Pennsylvania to other points in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit.

41 2. The court erred in deciding that in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance, the commerce here is purely internal, whatever the mere form of it may be.

3. The court erred in not deciding that the transportation by continuous carriage of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of

transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall have power "to regulate commerce with foreign nations and among the several States and with the Indian tribes."

That, the said exceptions having been overruled by the court of common pleas of Dauphin county, your petitioner, by writ of error, carried the case to the supreme court of Pennsylvania, to No. 25, May term, 1888, of the middle district of said court, and among its assignments of error included the overruling of the aforesaid exceptions by the court of common pleas of Dauphin county.

That the said cause having been fully argued in the supreme court of Pennsylvania, that court, upon the first day of October, 1888, affirmed the judgment of the court of commen pleas of Dauphin county.

That the supreme court of Pennsylvania, in which said cause was heard and decided, is the highest court of record and the court of last resort in the Commonwealth of Pennsylvania.

That the judgment of the said court is final.

That the judgment of the said court, as already shown, involved the decision of the Federal question, and that said decision is
42 in favor of the State law and against the immunity claimed by your petitioner under the Constitution of the United States.

Wherefore your petitioner (herewith presenting a bond, with security, for approval) prays that the writ of error may be allowed to issue to the said supreme court of Pennsylvania to bring up the record to the Supreme Court of the United States for correction in that which violates the Constitution and laws thereof, and that the citation to the defendant may accompany the same; and it will ever pray, &c.

THE LEHIGH VALLEY RAILROAD COMPANY,
By its Attorney, M. E. OLMSTED.

Allocatur of Writ.

Writ of error is allowed pursuant to the foregoing petition. October 18th, 1888.

JOSEPH P. BRADLEY,
Associate Justice of Supreme Court U. S.

43 *Writ of Error Bond.*

Supreme Court of the United States.

LEHIGH VALLEY RAILROAD COMPANY, Plaintiff in Error, *vs.* COMMONWEALTH OF PENNSYLVANIA, Defendant in Error.	In Error to the Supreme Court of Pennsylvania, Middle District. No. 25. May Term, 1888.

Know all men by these presents that we, The Lehigh Valley Rail-

road Company, a corporation of the State of Pennsylvania, and William A. Ingham and Charles Hartshorne, are held and firmly bound unto the Commonwealth of Pennsylvania in the sum of three thousand dollars ($3,000), lawful money of the United States of America, to be paid to the said Commonwealth of Pennsylvania or her certain attorney or assigns; to which payment, well and truly to be made, we do bind ourselves and each of us, our heirs, executors, administrators, and successors, firmly by these presents.

Sealed with our seals and dated the 15th day of October, A. D. 1888.

Whereas lately, in a court of common pleas in and for the county of Dauphin, judgment was entered against The Lehigh Valley Railroad Company at the suit of the Commonwealth of Pennsylvania, of January term, 1888, No. 516, which judgment was afterwards affirmed by the supreme court of the State of Pennsylvania in a certain plea and suit in said court of May term, 1888, No. 25, and
44 the said Lehigh Valley Railroad Company has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the supreme court of Pennsylvania:

Now, the condition of this obligation is such that if the above-name- Lehigh Valley Railroad Company, plaintiff in error, shall prosecute its writ of error with effect and answer all damages and costs if it shall fail to make good its plea, then this obligation to be void; otherwise to remain in full force and virtue.

[Seal of the L. V. R. R. Co.]

THE LEHIGH VALLEY RAILROAD COMPANY,
By CHAS. HARTSHORNE, *President.*
Attest: JOHN R. FANSHAW, *Secretary.*
WM. A. INGHAM. [SEAL.]
CHAS. HARTSHORNE. [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN R. FANSHAW.
EDWIN R. BAILES.

The above bond is approved October 18th, 1888.
JOSEPH P. BRADLEY,
Ass't Justice Sup. C't U. S.

45 *Certificate.*

STATE OF PENNSYLVANIA:

In testimony that the foregoing, contained on pages six to 44, inclusive, is a full, true, and correct copy of the record and proceedings of the supreme court of Pennsylvania, the highest court of law and equity in the State of Pennsylvania, in the case lately depending therein, *to* No. 25 of May term, 1888, middle district, wherein

The Lehigh Valley Railroad Company was plaintiff in error and The Commonwealth of Pennsylvania was defendant in error, I have hereunto subscribed my name and affixed the *the* seal of the said supreme court, at Harrisburg, this 20th day of October, A. D. 1888.

{ Seal of the Supreme Court of Pennsylvania, Middle District, 1776. }

WILLIAM PEARSON,
Prothonotary of the Supreme Court of Pennsylvania, Middle District.

46 [Endorsed:] 25. May 7, 1888. Lehigh Valley Railroad Co. *v.* Commonwealth of Pennsylvania. Transcript of record.

47 In the Supreme Court of the United States. No. —. October Term, 1888.

LEHIGH VALLEY RAILROAD COMPANY
vs.
COMMONWEALTH OF PENNSYLVANIA.

Surwrit of error by Lehigh Valley Railroad Company to the supreme court of Pennsylvania.

Assignments of Error.

1. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in including in the judgment in favor of the Commonwealth a tax upon $207,660.42, receipts for transporting freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit."

2. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in deciding that 'in principle the case before us does not seem to be within the mischief which the commercial clause of the Federal Constitution was intended to prevent. In reality and substance the commerce here is purely internal, whatever the mere form of it may be.'"

3. The learned court erred in not sustaining the company's exception to the decision of the court below, viz:

"The court erred in not deciding that the transportation, by continuous carriage, of freight and passengers from one point in Pennsylvania to another point in Pennsylvania, which freight and passengers were carried out of the State and in again in course of transit, was interstate transportation, and that the taxation of the receipts for such transportation was in violation of that clause of the Constitution of the United States which declares that Congress shall